

Construction contractors owe Use Tax on the cost price of any tangible personal property they incorporate into real estate. See 86 Ill. Adm. Code 130.1940. (This is a PLR.)

June 3, 2005

Dear Xxxxx:

This letter is in response to your letter received by our office on July 15, 2003 in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

Review of your request disclosed that all the information described in paragraphs 1 through 8 of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to ABC for the issue or issues presented in this ruling, and is subject to the provisions of subsection (e) of Section 1200.110 governing expiration of Private Letter Rulings. Issuance of this ruling is conditioned upon the understanding that neither ABC nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request. In your letter you have stated and made inquiry as follows:

"We are writing to request a Private Letter Ruling regarding the taxability of Marble and Granite Counter tops sold and installed by our company."

"We have had a previous Audit regarding this issue for the period July 1, 1999 through September 30, 2001. We also had an Informal Conference Board Review regarding this issue. The results of the audit, which was upheld by the Informal Conference Board Review [sic] was that the sale and installation of Granite and Marble counter tops were exempt from Retailers' Occupation Tax under Title 86, Part 130, Section 130.1940 (b) (4) and Section 130.2075 on the basis the counter tops became a part of real estate as ABC installed them. Consequently, the cost of machinery used to manufacture the tops was not exempt from Retailers Occupation Tax. This audit has been settled and is not pending. In our appearance before the Informal Conference Board Review [sic] we argued that the counter tops should be subject or Retailers Occupation Tax. This would have made our machinery purchases exempt from tax. Now we are concurring with their opinion, but wish to have it verified by your department."

"When we inquired about written confirmation that future sales of the counter tops would be exempt from tax under Section 130.1940 we were told by, both, the auditor, and the Informal Conference Review [sic] Board, that the only way that would be possible would be to obtain a private letter ruling from your department. We merely wanted written confirmation that if the auditor and the Informal Conference Board had determined the counter tops were converted to real estate and were exempt from Retailers Occupation Tax as outlined in Section 130.1940 and Section 130.2075, and we treated them as such, we would not be taxed on them in the future by an auditor who held a different opinion."

"Facts:

The sole owner of ABC is INDIVIDUAL who resides at ADDRESS, IL. ABC produces monuments and granite and marble counter tops from raw pieces of rock. Retailers' Occupation Tax occupation tax on the monuments is not in question. Their taxability has been established in Section 130.2150. We are writing only in regard to the counter tops produced."

"The counter tops are sold primarily to cabinet shops, construction contractors, and directly to home owners [sic]."

"The marble and granite cabinet tops are sold with the understanding that ABC will deliver the tops to the construction sites and place them on the cabinets. This is due to the possibility of breakage, the special skills needed to install the tops, and the special tools required should any modifications be needed. In our previous audit the Department of Revenue contended successfully that ABC was the primary contractor and use tax is due only on the cost of the raw ore purchased by ABC used in converting the rock to cabinet tops."

"The time spent placing the counter tops in place typically takes less than 2 hours. They are secured to the cabinets with a silicone adhesive. No separate charge is made for installation."

"A copy of contracts and sales agreements for the counter tops are enclosed."

"As noted above the tax period at issue is July 2003 to June 2013. Our previous audit is closed and no litigation is pending."

"To the best of our knowledge the Department has not previously ruled on this issue or a similar issue. We have not previously submitted this issue to the Department for a letter ruling."

"Title 86, Part 130, Section 130.1940 (b) (4) and Section 130.1940 (c) (1) states a construction contractor is not liable for tax on cabinets built into the structure. Section 130.2075 states that the construction contractor is subject to use tax on materials bought. This is the supporting authority for pur [sic] position."

"In our appearance before the Informal Conference Review Board we argued that ABC's role in placing the counter was more in the nature of delivery than an actual construction contract and that the counter tops should be subject to Retailers Occupation Tax. Our arguments were unsuccessful. We attempted to compare ABC's role to a Ready Mix Concrete Company delivering concrete to a construction site. We have found no other contrary authorities on this view."

“There are no specific trade secrets requested to be deleted from the ruling.”

DEPARTMENT’S RESPONSE:

Subsection (a)(6) of Section 130.1940 of the Department’s administrative rules provides that a construction contract is a contract to incorporate tangible personal property into real estate. See 86 Ill. Adm. Code 130.1940. The information contained in your letter, in addition to the documentation regarding the “Contract & Scheduling Requirements,” discloses that ABC requires that the granite and marble cabinet tops that it sells be delivered and installed by ABC.

Based upon this information, we believe that ABC is acting as a construction contractor when it sells granite and marble cabinet tops and requires those cabinet tops to be installed by ABC. As set out in Subsection (c) of Section 130.1940 of the Department’s administrative rules, ABC incurs only a Use Tax liability on the cost price of the cabinet tops in such situations. See also 86 Ill. Adm. Code 130.2075. ABC does not incur any Retailers’ Occupation Tax liability on the sale of the cabinet tops in those situations.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.ILTAX.com or contact the Department’s Taxpayer Information Division at (217) 782-3336.

Very truly yours,

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TDC:msk